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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

NICANDRO CEBALLOS

Plaintiff,

vs.

RICHARD SANDER, R.T. SANDER, LLC
 dba VICOLO WHOLESALE, E.J.M.
 CORPORATION dba VICOLO
 WHOLESALE, and DOES 1 - 10

Defendant.

C08 02162

The Honorable Thelton E. Henderson,
 Courtroom 12

ANSWER OF DEFENDANTS RICHARD
 SANDER, R. T. SANDER, LLC dba
 VICOLO WHOLESALE, E.J.M.
 CORPORATION dba VICOLO
 WHOLESALE and DOES 1 - 10

Defendants Richard Sander, R.T. Sander LLC dba Vicolo Wholesale, and E.J.M.
 Corporation dba Vicolo Wholesale, hereinafter "Defendants" respond to Plaintiff's Complaint as
 follows:

Response to Allegations of Complaint

1. Defendants admit the allegations of paragraphs 1 through 5.
2. Defendants lack information sufficient to form a belief as to the truth or falsity of
 paragraph 6, and on that basis, deny those allegations.
3. Defendants admit the allegations of paragraph 7.
4. Defendants deny the allegations of paragraph 8 to the extent that Plaintiff regularly
 worked in excess of eight hours per day and more than 40 hours per week, but admit that Plaintiff
 did so on some occasions.
5. Defendants deny the allegations of paragraph 10, except that Defendants admit that
 Plaintiff was not properly classified as an exempt employee.
6. Defendants admit the allegations of paragraph 11, except that Defendants deny that
 Plaintiff did not supervise any employees.

ANSWER

1 7. Defendants deny the allegations of paragraph 14, except that Defendants admit that
2 Plaintiff did work in excess of eight hours per day and more than 40 hours per week on some
3 occasions.

4 8. Defendants admit the allegations of paragraph 16 to the extent that some unpaid
5 overtime is due to Plaintiff.

6 9. Defendants deny the allegations of paragraph 17 through 19.

7 10. Defendants deny the allegations of paragraphs 23 through 25, except that Defendants
8 admit that Plaintiff was not an exempt employee, and that some unpaid overtime is due.

9 11. Defendants deny the allegations of paragraph 26.

10 12. Defendants admit the allegations of paragraph 27, to the extent that some overtime
11 is due to Plaintiff.

12 13. Defendants deny the allegations of paragraph 28.

13 14. Defendants admit the allegations of paragraph 30, to the extent that some overtime is
14 due to Plaintiff. Defendants deny the remaining allegations of paragraph 30.

15 15. Defendants deny the allegations of paragraphs 32 and 33.

16 16. Defendants deny the substantive allegations of paragraphs 36 through 42, except that
17 Defendants admit that some overtime pay is due to Plaintiff.

18 17. Defendants deny the allegations of paragraphs 46 through 50.

19 **Affirmative Defenses**

20 **First Affirmative Defense**

21 Plaintiff's complaint is barred because this Federal Court lacks subject matter jurisdiction
22 of the matters alleged in the complaint.

23 **Second Affirmative Defense**

24 Plaintiff's complaint is barred by the applicable statutes of limitations.

25 **Third Affirmative Defense**

26 Plaintiff's complaint is barred by the Statute of Frauds.

27
28
ANSWER

Fourth Affirmative Defense

Plaintiff's claim for attorneys fees and costs is barred because Defendants' early and generous offers of settlement made those attorneys fees and costs allegedly incurred unreasonable and unnecessary.

Fifth Affirmative Defense

Plaintiff's complaint is barred by Defendant's payment and Plaintiff's release of any remaining amounts due to him.

Sixth Affirmative Defense

Plaintiff's complaint is barred by Plaintiff's failure to perform.

Seventh Affirmative Defense

Plaintiff's complaint is barred by a failure of consideration.

Eighth Affirmative Defense

Plaintiff's complaint is barred by a failure of conditions.

Ninth Affirmative Defense

Plaintiff's complaint is barred by Plaintiff's waiver and estoppel.

Tenth Affirmative Defense

Plaintiff's complaint is barred by Plaintiff's breach of contract, breach of the implied covenant of good faith and fair dealing, unclean hands and bad faith.

WHEREFORE, DEFENDANTS PRAY AS FOLLOWS:

1. That Plaintiff take nothing by his complaint.
2. That Defendants be awarded their attorneys fees and costs incurred herein pursuant to statute.
3. That the Court award such other and further relief as it deems just and proper.

Dated this __ day of July, 2008

By
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ANSWER